

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL ADJUSTMENT ADMINISTRATION

PROPOSED AMENDMENTS BY CONTRACTING HANDLERS TO
MARKETING AGREEMENT FOR SHIPPERS OF FRESH
LETTUCE, PEAS, AND CAULIFLOWER GROWN IN
WESTERN WASHINGTON.

These Proposed Amendments by Contracting Handlers to Marketing Agreement for Shippers of Fresh Lettuce, Peas, and Cauliflower Grown in Western Washington in their present form are proposed as the basis of a public hearing for the above-mentioned industry, and none of the provisions contained herein are to be regarded as having received the approval of the Agricultural Adjustment Administration as applying to this industry.

(THIS IS NOT FOR SIGNATURE)

I hereby certify that this is a true and correct copy of the Proposed Amendments by Contracting Handlers to Marketing Agreement for Shippers of Fresh Lettuce, Peas, and Cauliflower Grown in Western Washington, on file in the Office of the Chief Hearing Clerk, United States Department of Agriculture, Agricultural Adjustment Administration.

(Signed) James K. Knudson
Chief Hearing Clerk
4725 South Building
U.S. Department of Agriculture
Washington, D. C.

Dated: March 19, 1935

Washington, D. C.

PROPOSED AMENDMENTS BY CONTRACTING HANDLERS TO
MARKETING AGREEMENT FOR SHIPPERS OF FRESH
LETTUCE, PEAS AND CAULIFLOWER GROWN IN
WESTERN WASHINGTON.

Whereas, on the 17th day of July, 1934, the undersigned contracting handlers entered into a Marketing Agreement entitled "Marketing Agreement for Fresh Lettuce, Peas and Cauliflower Grown in Western Washington", with the Secretary of Agriculture of the United States; and

Whereas, it is provided in Article XVI of said Marketing Agreement:

"Any amendment to this agreement shall become effective, at the date designated by the Secretary, upon approval of such amendment by the Secretary, provided that such amendment shall have first been approved by the contracting handlers who shipped not less than seventy-five per cent of the total shipments by all contracting handlers during the preceding shipping season."

and

Whereas, the handlers signatory to said Marketing Agreement are desirous of amending the same:

Now, therefore, the undersigned hereby approve the following amendments to said Marketing Agreement:

1. Delete paragraph 7 of section 1 of Article II and insert in lieu thereof the following:

"(7) The term 'handler' means any person, firm, corporation, or association engaged in shipping, marketing, handling, selling, consigning and/or dealing in, in person, or as or through an agent, broker, or representative, or otherwise, from or within western Washington, in not less than carload lots, lettuce, peas, and/or cauliflower, in the current of, or in competition with or so as to burden, obstruct or in any way affect interstate or foreign commerce."

2. Delete paragraph 9 of section 1 of Article II and renumber the remaining sections accordingly.

3. Delete paragraph 17 of section 1 of Article II and insert in lieu thereof the following:

"(16) The term 'managing agent' means the managing agent appointed pursuant to Article III hereof."

4. After the last paragraph of section 1 of Article II insert the following:

"(17) The term 'proration period' means any period

of time for which the Proration Period Committee contemplates instituting or institutes a proration of shipments.

"(13) The term 'available and intended for shipment' means the quantity of fresh lettuce, peas, and/or cauliflower ready or to be ready for shipment."

5. Renumber Article III as Article VI, delete sections 1 and 2 thereof, and insert in lieu thereof the following:

"Section 1. In order to improve returns to growers by adjusting the supply of fresh lettuce, peas, and/or cauliflower to the market demand, the Proration Committee may from time to time institute proration of shipments as hereinafter provided, but public notice thereof shall be given at least eighteen (18) hours before such proration shall become effective: Provided, however, That no proration of shipments of lettuce shall be instituted unless the prior approval of the Secretary is obtained."

Renumber the remaining sections of said Article accordingly.

6. Delete Article V and insert in lieu thereof the following:

"ARTICLE III -- CONTROL COMMITTEE

"Section 1. Members. A Control Committee shall be established consisting of eleven (11) members who shall be selected in accordance with the provisions of this article and shall serve until one year after the date of their respective elections or until their respective successors are selected. The initial members shall be selected within fifteen (15) days after the effective date of this Agreement and their respective successors (other than those selected to fill vacancies) shall be selected annually thereafter at least fifteen (15) days prior to the termination of the term of office of their respective predecessors. No delay in the selection of any member or his successor shall be deemed to invalidate such selection.

"Sec. 2. Selection of Members. Two (2) members shall be engaged in business in the Kent District, and one (1) member in each of the Auburn, Sumner, Grays Harbor, Seattle, Lake and North District respectively, and the other three (3) members and their successors may be selected irrespective of their places of business.

"Sec. 3. The members of the Control Committee, and each of their respective successors, shall be elected by a general election in which all handlers shall be entitled to participate. At any such election, each handler shall be entitled to cast but one (1) vote on behalf of himself, agents, partners, affiliates, subsidiaries, and representatives.

"Sec. 4. Alternates. Each group or person selecting a member of the Control Committee may, in the same manner, at any time, select an alternate to act in the place and stead of such member (a) in his absence, and/or (b) in the event of his removal, resignation or disqualification, until a successor for his unexpired term has been selected.

"Sec. 5. Vacancies. To fill any vacancies occasioned by the removal, resignation or disqualification of any member of the Control Committee, a successor for his unexpired term shall be selected within fifteen (15) days after such vacancy occurs, by the person, persons or group by whom, and in the same manner as, such member was selected.

"Sec. 6. Failure to Select Members. If any member or successor is not selected within the applicable period specified in this article, the Secretary may select a person, with full power to act as a member, to serve until such member or successor is selected.

"Sec. 7. Organization. Upon the selection of eight (8) of its members, the Control Committee may organize and commence to function; Provided, however, That (1) this provision shall not affect or supersede any other provision of this Agreement requiring a minimum vote with respect to specified action to be taken by the Control Committee; and (2) the Control Committee, shall not perform any of its duties or exercise any of the powers herein granted while there are more than three (3) vacancies in its membership.

"Sec. 8. Certification of Members. Upon the selection of any member or members of the Control Committee, the secretary of said committee shall certify to the Secretary the name and address of each such member and of his alternate, if any, and the date or dates of their selection. The members and alternates, if any, so certified to the Secretary, shall be deemed for all purposes to be the duly selected members and alternates of such committee, subject, however, to the right of any interested party to protest such selection in accordance with the applicable Administrative Orders issued by the Secretary. Before performing any duties as a member of the Control Committee, each member thereof shall file with the Secretary a written acceptance of office, oath, and agreement to perform his duties as such member.

"Sec. 9. Removal and Disapproval. The members of the Control Committee, or any other committee created hereunder (including successors, alternates or persons selected by the Secretary), and any agent or employee appointed or employed by the Control Committee, or by any other committee, shall be subject to removal by the Secretary, at any time, with or without cause. Each and every order, regulation, decision, determination or other act of the Control Committee, or of any other committee, shall be subject to

the continuing right of the Secretary to disapprove of the same at any time, and upon such disapproval shall be deemed null and void except as to acts done prior to such disapproval, and in reliance on, or in compliance with such order, regulation, determination or other act of such committee.

"Sec. 10. Expenses of Members. The members of the Control Committee shall serve without compensation, but shall be entitled to expenses necessarily incurred in the performance of their duties hereunder.

"Sec. 11. Powers and Duties. The powers and duties of the Control Committee shall include the following:

"1. To elect a chairman, and, from time to time, such other officers as it may deem advisable, and to adopt rules and regulations for the performance of its duties under this Agreement.

"2. To supervise the performance of this Agreement and to act as intermediary between the Secretary and the handlers and growers.

"3. To appoint such employees as it deems necessary and to determine the salary and define the duties of such employees.

"4. To appoint and define the duties of additional committees or subcommittees to assist it in the performance of any of its duties and functions hereunder.

"5. To investigate suspected violations of this Agreement and to hear and dispose of all questions, disputes and complaints arising in connection with the performance of this Agreement. If a member of the Control Committee shall be an interested party to any complaint or dispute, or a representative of such an interested party, he shall, for the purpose of the consideration of such dispute or complaint, be disqualified as a member of the Control Committee. Such disqualification, however, shall not be deemed to create a vacancy in the Control Committee within the prohibition of subdivision 2 of section 7 of this article.

"Sec. 12. Disqualification. No handler shall be entitled to participate in the selection of members of the Control Committee or any other committee in accordance with the terms of this article, if he has failed to pay his contribution pursuant to article V of this Agreement, or pursuant to any license supplementary hereto issued pursuant to section 8 (3) of the Act.

"Sec. 13. Reports; Books and Records. 1. The Control Committee shall, upon the request of the Secretary, furnish him such information as he may request, and all the

books and records of the Control Committee shall, at any time, be subject to the examination of the Secretary.

"2. The Control Committee shall keep books and records which will clearly reflect all its transactions.

"3. Upon the termination of this Agreement, the foregoing provisions shall continue to apply to the members of the Control Committee, functioning at the time of such termination, until such members have been discharged in accordance with the provisions of paragraph 3 of section 14 of this article.

"Sec. 14. Funds. All funds received by the Control Committee pursuant to any provision of this Agreement shall be used solely for the purpose therein specified, and shall be accounted for in the following manner:

"1. During the term of this Agreement, the Secretary may require the Control Committee and its members to account for all receipts and disbursements and/or to deliver all funds on hand, together with all books and records of the committee, at such time or times, in such manner and to such person, as the Secretary shall direct, and to execute such assignments or other instruments necessary or appropriate to vest in such person full title to all of the funds and/or claims vested in the Committee pursuant to this Agreement.

"2. Upon the expiration of the term of office of any member of the Control Committee, such member shall account for all receipts and disbursements and deliver all funds in his hands, together with all books and records in his possession, to his successor in office, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor full title to all of the funds and/or claims vested in such member pursuant to this Agreement.

"3. Upon the termination of this Agreement, the members of the Control Committee then functioning shall continue as joint trustees for the purpose of this Agreement of all funds then in the possession or under the control of the Committee, including claims for any funds which are unpaid at the time of such termination. Said trustees (a) shall continue in such capacity until discharged by the Secretary, (b) shall from time to time account for all receipts and disbursements and/or deliver all funds on hand, together with all books and records of the Committee and the joint trustees, to such person as the Secretary shall direct, and (c) shall, upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title to all of the funds and/or claims vested in the Committee pursuant to this Agreement. Any funds collected for expenses pursuant to article V and held by such joint trustees or such person over and above amounts necessary to meet outstanding

obligations and the expenses necessarily incurred by the joint trustees or such other person in the performance of their duties hereunder, shall, as soon as practicable after the termination of this Agreement and of any license issued supplementary hereto pursuant to section 8 (3) of the Act, be returned to the distributors prorata in proportion to their contributions made pursuant to this Agreement and/or pursuant to any license issued supplementary hereto.

"4. Any person to whom funds and/or claims have been delivered by the Control Committee or its members, shall be subject to the same obligations and duties with respect to said funds as are hereinabove imposed upon the members of said Committee.

"Sec. 15. Collection of Funds. The Control Committee is authorized and empowered, subject to the prior approval of the Secretary, to institute legal proceedings in the name of its individual members as a committee and to take such other steps as may be necessary to collect or enforce the payment of funds from persons liable therefor, pursuant to the provisions of this Agreement. Upon the termination of this Agreement, the foregoing power shall (unless otherwise provided in the notice of termination) continue in the members of the Committee as trustees pursuant to section 14 of this article with respect to any funds unpaid at the time of such termination: Provided, That such power may at any time be terminated by the Secretary and vested in such other person as the Secretary may direct. Nothing herein contained shall be construed to be in derogation or modification of the rights of the Secretary at any time to institute legal proceedings or to take such other steps as may be necessary to collect or enforce the payment of any such funds."

7. Renumber Article VI as Article IV.

8. Delete Article VIII and insert in lieu thereof the following:

"ARTICLE V -- EXPENSES

"Section 1. Expenses. To carry out the provisions of this Agreement and of any license supplementary thereto, issued pursuant to section 8 (3) of the Act, the Control Committee is authorized and directed:

"1. To incur such reasonable obligations as may be necessary and proper, and to meet such obligations out of funds raised as herein provided;

"2. To submit to the Secretary for his approval, subject to such notice and opportunity for hearing as the Secretary, by Administrative Order or otherwise, may prescribe (a) an itemized budget of its estimated expenses for the foregoing purposes, and (b) an equitable basis

upon which the funds necessary to support such budget shall be contributed.

"Sec. 2. Contributions. Upon the approval by the Secretary of such budget, each of the contracting handlers agrees to contribute to the Control Committee his share of the funds to be raised by it, in accordance with the basis of contribution submitted to and approved by the Secretary pursuant to paragraph 2 of section 1 of this article.

"Sec. 3. Approval of Expenditures. All obligations incurred by the Proration Committee, or by any other committee created hereunder, shall be subject to the approval of the Control Committee, and when approved, subject to the provisions of section 2 of this article, shall be paid by the Control Committee out of the funds raised by it, available for such purpose."

9. Insert as Article VII the following:

"ARTICLE VII -- REGULATION OF RAILROAD SHIPMENTS

"Section 1. Purpose. In order to adjust the flow of lettuce, peas, and/or cauliflower, to market, the Proration Committee may from time to time issue orders limiting the number of carloads of lettuce, peas, and/or cauliflower which may be forwarded from designated concentration points during any specified period or periods of time, but notice thereof shall be given at least eighteen (18) hours before such order shall become effective: Provided, however, That the Proration Committee shall not issue such order unless (1) the shipments of lettuce, peas, and/or cauliflower are being limited pursuant to article VI and/or article IX, or, (2) in case the provisions of article VI and/or article IX are not in operation, unless the quantity of lettuce, peas, and/or cauliflower available and intended for shipment during a specified period is not in excess of the quantity of each such commodity which it deems advisable to be shipped during such period; it being the intention that the provisions of this article are to serve and are to be used to level out the day-to-day shipments and not to limit the total quantity of lettuce, peas, and/or cauliflower forwarded during the season.

"Sec. 2. Issuance of Orders. In the event the Proration Committee acts pursuant to section 1 of this article it shall proceed as hereinafter set forth:

"1. The Proration Committee shall designate as concentration points such railroad centers as it may deem advisable to effectuate the purposes of this article.

"2. The Proration Committee shall determine the total number of cars of lettuce, peas, and/or cauliflower which it deems advisable to forward from all concentration points during such period.

"3. The Proration Committee shall ascertain the total number of cars of lettuce, peas, and/or cauliflower available for forwarding at all concentration points during such period. Only cars that have actually arrived at such concentration points shall be considered as available for forwarding. If a car is to be precooled at any concentration point, it shall not be considered as available for forwarding until the pre-cooling is completed. Cars defined as mixed by the Proration Committee shall not be subject to the provisions of this article.

"4. If the total number of cars available for forwarding at all concentration points, as determined pursuant to paragraph 3, exceeds the total number of cars deemed advisable to forward, as determined pursuant to paragraph 2, the Proration Committee may order a limitation of the number of cars that may be forwarded from any or all concentration points for a designated period of time.

"5. Cars of lettuce, peas, and/or cauliflower subject to orders issued by the Proration Committee pursuant to this section shall be permitted to leave concentration points in the order in which they arrive, it being the intention that the first car of lettuce, peas, and/or cauliflower in point of time to arrive shall be the first to leave until the permissible number of carloads has been released. The time of arrival of a car shall be the actual time of its arrival at the concentration point unless it is to be precooled at such concentration point, in which case it shall be the time precooling is completed and the carrier is notified thereof by the precooling agent.

"6. Upon orders of the Proration Committee, each handler shall file with each carrier a stop-order directing the carrier to stop any car of lettuce, peas, and/or cauliflower and hold same at any concentration point during any period of limitation of shipments pursuant to this section, until the Proration Committee authorizes such car to be released.

"7. The Proration Committee shall notify the Secretary upon the issuance of any order pursuant to this section. The Secretary shall have the right to cancel or modify any order, rule or regulation issued by the Proration Committee pursuant to this section at any time.

"Sec. 3. Exemptions. Anything hereinabove to the contrary notwithstanding, nothing in this article contained shall be construed to authorize any limitation of the right to ship lettuce, peas, and/or cauliflower in any amount for canning, conversion into byproducts, or for charitable or unemployment relief purposes: Provided, That the Proration Committee may from time to time prescribe proper safeguards to prevent the reintroduction into the channels of fresh

trade of lettuce, peas, and/or cauliflower shipped for such purposes."

10. Delete Article VII and insert as Article VIII the following:

"ARTICLE VIII -- GRADING

"Section 1. All shipments of fresh lettuce, peas, and/or cauliflower shall be graded and certified on the basis of the grades now promulgated by the United States Department of Agriculture, or as same may be modified or changed hereafter. Each container shall bear the United States grade of its contents and shall be marked in a conspicuous manner with the name and address of the shipper.

"Sec. 2. 1. Each handler agrees that he will utilize the standard United States Inspection Service and will pay the cost of this service.

"2. Each shipment shall be accompanied by a standard inspection certificate or official memorandum thereof indicating conformity to the said United States Grades.

"Sec. 3. The inspection and certification provided for in this article shall be required during such period as the Control Committee may designate in each shipping season."

11. Insert Article IX as follows:

"ARTICLE IX -- REGULATION OF GRADES AND SIZES

"Section 1. Purpose of Regulation. In order to increase returns to growers by adjusting the supply and quality of lettuce, peas, and/or cauliflower to market demands, if the Proration Committee shall deem it necessary to limit the grades and/or sizes of lettuce, peas, and/or cauliflower which may be shipped during a given period, it may order that only specified grades and/or sizes or a certain portion of such grades and/or sizes of lettuce, peas, and/or cauliflower may be shipped during such period.

"Sec. 2. Method and Manner of Regulation. 1. In the event the Proration Committee regulates the shipment of lettuce, peas, and/or cauliflower in accordance with this article, it shall determine and announce the percentage which the grades and/or sizes of lettuce, peas, and/or cauliflower which are permitted to be shipped is of the total quantity available and intended for shipment during such period, and shall set forth the provisions of paragraph 2 of this section with respect to the issuance of special certificates and the procedure by which growers may apply therefor.

"2. Orders issued pursuant hereto and announcements re-

quired to be made hereunder shall be published in a newspaper or newspapers of general circulation to be selected by the Proration Committee in the area where lettuce, peas or cauliflower are produced and/or shipped or by such other or additional means as are reasonably calculated to bring such information to the attention of growers, handlers and other interested parties. No order shall become effective sooner than eighteen (18) hours after notice thereof has been released.

"Sec. 3. Special Certificates. Upon application by any grower and submission of proof by him that by reason of such regulation he is unable to ship as large a proportion of lettuce, peas, and/or cauliflower grown by him and covered by such order as the percentage which the proration committee permits to be shipped, the Proration Committee shall issue to such grower a special certificate for such difference and such certificate shall be subject to such rules and regulations as the Proration Committee may prescribe.

"Sec. 4. Shipments in Violation of Regulations. No person shall ship lettuce, peas, or cauliflower in violation of this order except lettuce, peas or cauliflower shipped pursuant to section 9 of article VI and pursuant to special certificates issued as provided in section 3 of this article.

"Sec. 5. Reports to Secretary. The Secretary shall be immediately notified of any order issued under this article. Any order of the Proration Committee adopted pursuant to the provisions of this article shall be subject to the continuing right of the Secretary to disapprove of the same at any time and any such order may at any time be cancelled or modified in any way by the Secretary.

"Sec. 6. Exemptions. Anything hereinabove to the contrary notwithstanding nothing contained in this article shall be construed to authorize any limitation on the right to ship lettuce, peas, and/or cauliflower in any amount for canning, conversion into byproducts, or for charitable and unemployment relief purposes; Provided, however, That the Proration Committee may from time to time prescribe proper safeguards to prevent the reintroduction into the channels of fresh trade of lettuce, peas, and/or cauliflower shipped for such purposes."

12. Insert Article X as follows:

"ARTICLE X -- STANDARDIZATION OF CONTAINERS"

"Section 1. Standardization of containers. All shipments of fresh lettuce, peas, and/or cauliflower shall be packed only in containers which meet the specifications prescribed for the respective crops by the Control Committee, subject to the prior approval of the Secretary: Provided, That in case standards have been or shall be promulgated for any of such containers under the Standard Container Act

of 1928, the specifications prescribed by the Control Committee shall conform thereto."

13. Delete Article IV and insert in lieu thereof the following:

"ARTICLE XI -- REPORTS

"Section 1. To the Secretary. 1. The contracting handlers shall severally, from time to time, upon the request of the Secretary, furnish him with such information as he may request, in a manner prescribed by him, and/or in accordance with forms of reports to be supplied by him, for the purposes of (a) assisting the Secretary in the furtherance of his powers and duties with respect to this Agreement, and/or (b) enabling the Secretary to ascertain and determine the extent to which the declared policy of the Act and the purposes of this Agreement are being effectuated, such reports to be verified under oath. The Secretary's determination as to the necessity of and justification for the making of such reports and the information called for thereby shall be final and conclusive.

"2. The contracting handlers also severally agree that, for the same purposes, and/or to enable the Secretary to verify the information furnished him on said forms of report, all their books and records, and the books and records of their affiliates and subsidiaries, shall, during the usual hours of business, be subject to the examination of the Secretary. The Secretary's determination as to the necessity of and justification for any such examination shall be final and conclusive.

"3. The contracting handlers and their respective affiliates and subsidiaries shall severally keep books and records which will clearly reflect all financial transactions of their respective businesses and the financial conditions thereof.

"4. Each contracting handler shall, from time to time, upon the request of the Secretary, report to the Secretary charges made or paid for commissions, brokerage, storage, packing, or for any other service or activities.

"5. All information furnished the Secretary pursuant to this article shall remain confidential in accordance with the applicable General Regulations, Agricultural Adjustment Administration.

"Sec. 2. To the committees. To enable the committees to perform their duties hereunder and to make this Agreement effective, each contracting handler shall promptly furnish when, and in such form and substantiated in such manner as the respective committees may from time to time prescribe, all information requested as to quantities of fresh lettuce, peas, and/or cauliflower available for shipment in any period, which he owns or has authority to handle, with the name of any person for whom he has authority to ship and the amount of such intended shipments, and all information requested as to



shipments, destination of shipments, and diversion of shipments.

"Sec. 3. To the Manager. Each contracting handler shall report to the Manager, daily, at the close of business such information concerning his business transactions in fresh lettuce, peas, and/or cauliflower as the Manager may prescribe. Such information shall remain confidential with the Manager and the Secretary, except that the Manager shall compile the same in such form as not to disclose the separate sources thereof, and mail a copy thereof to each contracting handler daily. The Manager shall submit the daily reports of contracting handlers to the Secretary on his request.

"Sec. 4. Investigation by Managing Agent. The handlers also severally agree that to enable the Managing Agent to verify any information furnished a committee pursuant to this Agreement, such of their books and records and the books and records of their affiliates and subsidiaries as are pertinent to such inquiry, shall, during the usual hours of business, be subject to the examination of the Managing Agent or his representative.

"Sec. 5. Reports by railroads. The contracting handlers agree to and do hereby authorize any and all railroad companies to furnish to the Proration Committee, or any other committee, or agent designated by a committee, a complete daily record of each shipment of fresh lettuce, peas, and/or cauliflower, showing the point of origin thereof, the shipper, the car number, the destination, and any diversion of the shipment for the purposes of assisting in the orderly distribution of fresh lettuce, peas, and/or cauliflower."

14. Insert as Article XII the following:

"ARTICLE XII -- APPEALS

"Section 1. Appeals. Any grower or handler may petition the Secretary to review any order or decision of the Control Committee, proration Committee, or any other committee which may be established hereunder. Pending the disposition by the Secretary of any appeal, the parties shall abide by the order or decision of such Committee, unless the Secretary shall rule otherwise pending such disposition.

"Sec. 2. Action upon Appeal. Any such petition must be filed in writing setting forth the facts upon which it is based. The Secretary shall, if the facts stated show reasonable grounds for appeal, grant such petition and may revise or change in any manner any order or decision from which an appeal is taken."

15. Renumber Articles IX to XIX, both inclusive as Articles XIII to XXIII, both inclusive.

In witness whereof, the contracting handlers, acting under the provisions of Article XVI of the aforesaid Marketing Agreement, for the purposes and subject to the limitations herein contained, and not otherwise, have hereunto set their respective hands and seals.